

FIRST REGULAR SESSION

# SENATE BILL NO. 11

95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS BARTLE, PURGASON, RIDGEWAY AND CALLAHAN.

Pre-filed December 1, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal section 414.255, RSMo, relating to fuel ethanol.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 414.255, RSMo, is repealed, to read as follows:

[414.255. 1. This section shall be known and may be cited  
2 as the "Missouri Renewable Fuel Standard Act".

3 2. For purposes of this section, the following terms shall  
4 mean:

5 (1) "Aviation fuel", any motor fuel specifically compounded  
6 for use in reciprocating aircraft engines;

7 (2) "Distributor", a person who either produces, refines,  
8 blends, compounds or manufactures motor fuel, imports motor fuel  
9 into a state or exports motor fuel out of a state, or who is engaged  
10 in distribution of motor fuel;

11 (3) "Fuel ethanol-blended gasoline", a mixture of ninety  
12 percent gasoline and ten percent fuel ethanol in which the fuel  
13 ethanol meets ASTM International Specification D4806, as  
14 amended. The ten percent fuel ethanol portion may be derived  
15 from any agricultural source;

16 (4) "Position holder", the person who holds the inventory  
17 position in motor fuel in a terminal, as reflected on the records of  
18 the terminal operator. A person holds the inventory position in  
19 motor fuel when that person has a contract with the terminal  
20 operator for the use of storage facilities and terminating services  
21 for motor fuel at the terminal. The term includes a terminal

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

22 operator who owns motor fuel in the terminal;

23 (5) "Premium gasoline", gasoline with an antiknock index  
24 number of ninety-one or greater;

25 (6) "Price", the cost of the fuel ethanol plus fuel taxes and  
26 transportation expenses less tax credits, if any; or the cost of the  
27 fuel ethanol-blended gasoline plus fuel taxes and transportation  
28 expenses less tax credits, if any; or the cost of the unblended  
29 gasoline plus fuel taxes and transportation expenses less tax  
30 credits, if any;

31 (7) "Qualified terminal", a terminal that has been assigned  
32 a terminal control number (tcn) by the Internal Revenue Service;

33 (8) "Supplier", a person that is:

34 (a) Registered or required to be registered pursuant to 26  
35 U.S.C., Section 4101, for transactions in motor fuels in the bulk  
36 transfer/terminal distribution system; and

37 (b) One or more of the following:

38 a. The position holder in a terminal or refinery in this  
39 state;

40 b. Imports motor fuel into this state from a foreign country;

41 c. Acquires motor fuel from a terminal or refinery in this  
42 state from a position holder pursuant to either a two-party  
43 exchange or a qualified buy-sell arrangement which is treated as  
44 an exchange and appears on the records of the terminal operator;  
45 or

46 d. The position holder in a terminal or refinery outside this  
47 state with respect to motor fuel which that person imports into this  
48 state. A terminal operator shall not be considered a supplier based  
49 solely on the fact that the terminal operator handles motor fuel  
50 consigned to it within a terminal. "Supplier" also means a person  
51 that produces fuel grade alcohol or alcohol-derivative substances in  
52 this state, produces fuel grade alcohol or alcohol-derivative  
53 substances for import to this state into a terminal, or acquires  
54 upon import by truck, rail car or barge into a terminal, fuel grade  
55 alcohol or alcohol-derivative substances. "Supplier" includes a  
56 permissive supplier unless specifically provided otherwise;

57 (9) "Terminal", a bulk storage and distribution facility

which includes:

(a) For the purposes of motor fuel, is a qualified terminal;

(b) For the purposes of fuel grade alcohol, is supplied by truck, rail car, boat, barge or pipeline and the products are removed at a rack; and

(10) "Unblended gasoline", gasoline that has not been blended with fuel ethanol.

3. Except as otherwise provided under subsections 4 and 5 of this section, on and after January 1, 2008, all gasoline sold or offered for sale in Missouri at retail shall be fuel ethanol-blended gasoline.

4. If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended gasoline from a position holder or supplier at the terminal at the same or lower price as unblended gasoline, then the purchase of unblended gasoline by the distributor and the sale of the unblended gasoline at retail shall not be deemed a violation of this section. The position holder, supplier, distributor, and ultimate vendor shall, upon request, provide the required documentation regarding the sales transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and unblended gasoline to the department of agriculture and the department of revenue. All information obtained by the departments from such sources shall be confidential and not disclosed except by court order or as otherwise provided by law.

5. The following shall be exempt from the provisions of this section:

(1) Aviation fuel and automotive gasoline used in aircraft;

(2) Premium gasoline;

(3) E75-E85 fuel ethanol;

(4) Any specific exemptions declared by the United States Environmental Protection Agency; and

(5) Bulk transfers between terminals.

The director of the department of agriculture may by rule exempt or rescind additional gasoline uses from the requirements of this section. The governor may by executive order waive the requirements of this section or any part thereof in part or in whole

94 for all or any portion of this state for reasons related to air  
95 quality. Any regional waiver shall be issued and implemented in  
96 such a way as to minimize putting any region of the state at a  
97 competitive advantage or disadvantage with any other region of the  
98 state.

99 6. The provisions of section 414.152 shall apply for purposes  
100 of enforcement of this section.

101 7. The department of agriculture is hereby authorized to  
102 promulgate rules to ensure implementation of, and compliance and  
103 consistency with, this section. Any rule or portion of a rule, as that  
104 term is defined in section 536.010, RSMo, that is created under the  
105 authority delegated in this section shall become effective only if it  
106 complies with and is subject to all of the provisions of chapter 536,  
107 RSMo, and, if applicable, section 536.028, RSMo. This section and  
108 chapter 536, RSMo, are nonseverable and if any of the powers  
109 vested with the general assembly pursuant to chapter 536, RSMo,  
110 to review, to delay the effective date, or to disapprove and annul a  
111 rule are subsequently held unconstitutional, then the grant of  
112 rulemaking authority and any rule proposed or adopted after  
113 August 28, 2006, shall be invalid and void.

114 8. All terminals in Missouri that sell gasoline shall offer for  
115 sale, in cooperation with position holders and suppliers, fuel  
116 ethanol-blended gasoline, fuel ethanol, and unblended  
117 gasoline. Terminals that only offer for sale federal reformulated  
118 gasolines, in cooperation with position holders and suppliers, shall  
119 not be required to offer for sale unblended gasoline.

120 9. Notwithstanding any other law to the contrary, all fuel  
121 retailers, wholesalers, distributors, and marketers shall be allowed  
122 to purchase fuel ethanol from any terminal, position holder, fuel  
123 ethanol producer, fuel ethanol wholesaler, or supplier. In the event  
124 a court of competent jurisdiction finds that this subsection does not  
125 apply to or improperly impairs existing contractual relationships,  
126 then this subsection shall only apply to and impact future  
127 contractual relationships.]